

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ERIKA EBERHARDINGER,)
Plaintiff,)
v.) No. 1:16-CV-02481-CCC
BENJAMIN SMITH,) (Chief Judge Connor)
MATTHEW FOSTER,)
Defendants.) JURY TRIAL DEMANDED

RESPONSE TO MOTION FOR STAY

Plaintiff, Erika Eberhardinger, responds to the Motion for Stay filed by Defendant Benjamin Smith (“Smith” or “Defendant”) on December 4, 2018. Smith is now seeking to stay the proceedings, well after filing the Notice of Appeal, after the deadline for Motions in Limine, and after Plaintiff prepared and filed her Motions in Limine. The Court should deny Smith’s Motion to Stay for the following reasons.

First, while Smith did appeal the Order on Motion for Summary Judgment to the Third Circuit Court of Appeals, such an appeal is interlocutory. Plaintiff submits that such an appeal is improper under applicable law and has indicated the same to the Court of Appeals. In the

likely event that the Court of Appeals finds that interlocutory appeal is improper, a stay of proceedings would serve only to further delay trial.

Second, Defendant's failure to file the within motion at any time prior has prejudiced the Plaintiff. Defendant should have filed this Motion much closer in time to the filing of the Notice of Appeal so that Plaintiff would not have continued to prepare for trial. As a result of this delay Plaintiff has prepared and filed Motions in Limine. Such a request to stay proceedings is thus, not in good faith.

Alternatively, in the event that the Court intends to grant Defendant's Motion, Plaintiff specifically requests the Court refrain from staying the Motion in Limine deadline. As indicated, the deadline has passed without Defendant filing any Motions. Defendant's decision to file a Motion to Stay after the Motion in Limine deadline should not provide Defendant a second bite at the apple to file Motions in Limine. Even if the matter is stayed by this Honorable Court, Defendant should be barred from filing Motions in Limine.

Respectfully submitted,

s/ Patrick J. Best, Esq.

Patrick J. Best

ARM Lawyers

18 N. 8th St.

Stroudsburg PA 18360

570-424-6899